

HOUSE BILL 1189
By Buck

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 30, relative to criminal procedure.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-30-106, is amended by adding the following as a new subsection:

(j) If the matter in which the petitioner is seeking post-conviction relief is the result of a plea agreement entered into with the state, all issues known to the petitioner at the time of the plea are deemed waived unless reserved by the petitioner. The petitioner in entering into a plea agreement with the state may waive any issue including specific issues of counsel's performance. Issues of fact, defenses and issues of law need not be in writing to be deemed waived. Issues of counsel's performance shall be waived only if specifically waived in a writing signed by the petitioner and made a part of the plea proceeding. All issues and facts waived in writing regardless of the court's use of a form shall not be considered an issue for post-conviction relief. The court shall deem the petitioner to have voluntarily waived all matters contained in documents and submitted to the court. The court shall consider the record and all writings submitted during the plea hearing in its initial review of the petition for post-conviction relief and disallow all issues included in the judgment and documents presented at the plea hearing.

SECTION 2. Tennessee Code Annotated, Section 40-30-110, is amended by deleting subsection (f) in its entirety and substituting instead the following:

(f)(1) The petitioner shall have the burden of proving the allegations of fact by clear and convincing evidence. In all hearings, the uncorroborated testimony of the petitioner shall be insufficient to carry the petitioner's burden of proof.

(2) There is a rebuttable presumption that a ground for relief not raised before a court of competent jurisdiction in which the ground could have been presented is waived.

SECTION 3. This act shall take effect July 1, 2005, the public welfare requiring it.